STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AD, JR, and JR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DANIEL C. REED,

Respondent-Appellant.

UNPUBLISHED
June 19, 2001

No. 231088
Oceana Circuit Court
Family Division
LC No. 99-0736-NA

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Respondent Daniel Reed appeals as of right from a family court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

I. Facts and Proceedings

The Family Independence Agency (FIA) filed the initial petition alleging chronic neglect on January 27, 1999, after respondent, in the presence of his children, attempted suicide by ingesting an unknown quantity of prescription drugs. This suicide attempt was approximately the eleventh time respondent had attempted suicide. The petition also indicated that respondent's child, AD, had attempted suicide in May of 1998 and that following this suicide attempt, AD missed a psychiatric examination scheduled in order to review AD's depression medications. The petition further indicated that there had been twelve previously substantiated abuse or neglect allegations against respondent, dating as far back as 1980. Following a preliminary hearing on the petition, the family court authorized the petition, made the children temporary wards, and placed AD in the care of foster workers. At that time, both JR and JR[1] were

[1] Respondent's sons do have different names, though both names begin with the letter J.

permitted to remain with their mother in the family home, provided that respondent stayed away from the home pending further review.[2]

In August 1999, respondent entered into a parent-agency agreement with the FIA that required respondent to, among other things, (1) refrain from alcohol and drugs, (2) continue individual counseling and follow all treatment recommendations, (3) attend alcohol anonymous (AA) meetings at least twice a week, (4) attend parenting classes, (5) participate in a psychological evaluation and (6) follow all court orders. Nonetheless, despite this agreement, respondent failed to comply with most aspects of the parent-agency agreement. Thus, on August 3, 2000, the FIA filed a supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i) and (g); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), and (g). On October 18, 2000, a hearing was held before the family court regarding this supplemental petition. Based on the testimony and evidence presented at that hearing, the trial court, on October 24, 2000, ruled that petitioner had established clear and convincing evidence that termination was proper under subsections (3)(c)(i) and (g) and also determined that termination was clearly not against the best interests of the children.[3]

II. Standard of Review

This Court's review of a trial court's factual findings in an order terminating parental rights is for clear error. MCL 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Vasquez*, 199 Mich App 44, 51; 501 NW2d 231 (1993). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, *supra*. Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *In re Newman*, 189 Mich 61, 65; 472 NW2d 38 (1991). Once the trial court finds a statutory ground for termination by clear and convincing evidence, the court must terminate parental rights unless it finds, based on the whole record, that termination is clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Maynard*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

III. Analysis

Defendant contends that the family court erred in terminating his parental rights because the petitioner failed to establish a statutory ground for termination by clear and convincing evidence. Alternatively, defendant argues that the family court erred when it found that termination was clearly not against the best interests of the children. We disagree.

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[2] At a later date, JR and JR were also removed from the home. The mother of the children voluntarily relinquished her parental rights to the children in an order dated October 25, 2000. This order is not before this Court.

[3] At that time, respondent's wife and the mother of the children voluntarily relinquished her parental rights to the children and therefore is not a party to this appeal.

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3198(598.19b)(3)(c)(i) and (g), which provide for termination as follows:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:
>
> (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time consider the child's age.
>
> * * *
>
> (g) The parent, without intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

In the instant case, respondent's own testimony clearly established that he had failed to provide proper care and custody to his children and that there was no reasonable expectation that he would be able provide such care in a reasonable time, based on the age of the children. Respondent testified that he was in jail for drunk driving and for driving on a suspended license and that he would not be released until July 2001. Respondent also admitted that he had abused drugs and alcohol since he was nine-years-old and that before going to jail he had used marijuana or alcohol on a daily basis, even at times doing so in the presence of his children. He also indicated that he had not attended AA meetings and that he purchased marijuana for AD on at least one occasion. In addition, respondent's testimony revealed that on one occasion his daughter, TD, prevented his suicide attempt by pulling a loaded rifle out of his mouth.[4] Further, respondent testified that he had not availed himself to drug treatment, educational or vocational training in jail and that, while he hoped to find employment and suitable housing after being released, he did not have either at the present time. Accordingly, termination of his parental rights under subsection 19b(3)(g) was proper.[5]

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[4] We note that respondent's parental rights to TD, and also to another son, DR, were not terminated because the court found, prior to the termination hearing, that termination was clearly not in the best interests of those children. This decision is not before this Court in this appeal.

[5] Because the family court properly terminated respondent's rights under subsection 19b(3)(g) and only one statutory ground for termination must be established in order to terminate parental rights, we need not decide whether termination was also proper under subsection 19b(3)(c)(i). *In re Trejo*, *supra* at 350.

We also find that the family court's assessment of the best interests of the children was not clearly erroneous. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, *supra*. The record reveals that respondent's children had been temporary court wards for nearly two years at the time of the termination and that it would be at least nine more months before respondent would be released from jail. The record also establishes that respondent's children had previously written to the court requesting that respondent receive drug and alcohol treatment because when he is on drugs or alcohol they feel "angry, upset, depressed, and neglected." In addition, the record indicates that respondent had refused to comply with the parent-agency agreement and had indicated to the court that he would not cooperate with efforts to reunite him with his children and would simply wait until they were eighteen to have contact with them. Further, the record shows that the children were adapting well to their new foster homes and that their school attendance, participation, effort, and grades had improved dramatically. Thus, based on the whole record, we are not left with the definite and firm conviction that termination was clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Miller*, *supra*; *In re Trejo*, *supra*; *In re Maynard*, *supra*.

Affirmed.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder